



April 13, 2000

Ms. Judy Doran
Open Records Coordinator
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2000-1472

Dear Ms. Doran:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135180.

The Texas Parks and Wildlife Department (the "department") received the following request:

- (1) the name, job title, pay titles, date of employment, date of birth and current job title of all Texas Parks and Wildlife Department employees that were not demoted thru reclassification on September 1, 1999, that were paid according to the state salary schedule C group C7 in August 1999.
- (2) the name, job title, pay titles, date of employment, date of birth and current job title of all Texas Parks and Wildlife Department employees that were paid according to the state salary schedule C group C7 on or after September 1, 1999.
- (3) the name, job title, base pay on August 31, 1999, base pay on September 1, 1999 and current base pay of all supervisors and administrative personnel, working for Texas Parks and Wildlife Department, who have received a promotion, merit raise or other pay raise after September 2, 1999.

You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative samples of information.¹

Section 552.022, amended by the Seventy-sixth legislature, provides the following:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

. . . .

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Section 552.103 is a discretionary exception under the Public Information Act and is, therefore, not other law that makes the requested information confidential. Therefore, you must release the name, salary, title, and dates of employment of the employees of the department which are subject to the request.

The requestor has also requested the birth dates of employees that were not demoted through reclassification and were paid in accordance with a certain state salary schedule. Section 552.022(a)(2) does not include birth dates. Therefore, we will consider your section 552.103 argument with regard to the request for the birth dates of certain department employees.

Section 552.103(a), amended by the Seventy-sixth Legislature, reads as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Further, litigation must be pending or reasonably anticipated on the date the requestor applies to the public information officer for access. Gov't Code § 552.103(c).

You have submitted evidence that the requestor has filed a complaint of age discrimination against the department with the Texas Commission on Human Rights (the "TCHR"). This office has ruled that a pending complaint before the Equal Employment Opportunity Commission (the "EEOC") indicates a substantial likelihood of litigation relating to the complaint. Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). The TCHR operates as a federal deferral agency under section 706(c) of title VII, 42 U.S.C. § 2000e-5. The EEOC defers jurisdiction over complaints alleging employment discrimination to the TCHR. *Id.* Therefore, we agree that the department has shown that it reasonably anticipates litigation relating to the age discrimination complaint. Further, we conclude that birth dates of department employees are related to the anticipated litigation and may be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

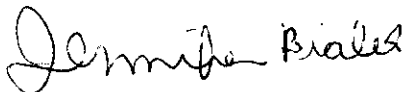
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ch

Ref: ID# 135180

Encl. Submitted documents

cc: Mr. Milburn Dearing
P.O. Box 179
Boerne, Texas 78006
(w/o enclosures)